Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Allen	Analyst:	Jessica Matus	Bill Number:	AB 1195
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Date:	March 31, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Modify Jobs Tax Credit

SUMMARY

This bill would expand the current Jobs tax credit to taxpayers that employ 40 or fewer employees for up to the first three years of employment.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The March 31, 2011, amendments removed all of the bill's provisions, which related to legislative intent, and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

Summary of Proposed Amendments

Amendments have been provided to correct a cross referencing error and make a grammatical change.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to stimulate job creation by expanding the current hiring incentive to businesses that have the ability to employ new workers and expand their current workforce.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

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ANALYSIS

FEDERAL/STATE LAW

Current state law, SBX 3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17) allows a credit for taxable years beginning on or after January 1, 2009, for a qualified employer in the amount of $3,000 for each qualified full-time employee hired in the taxable year, determined on an annual full-time basis equivalent. The calculation of annual full-time basis would be the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000. This credit is allocated by the Franchise Tax Board (FTB) and has a cap of $400 million for all taxable years. The credit remains in effect until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed after that date. Any credits not used in the taxable year may be carried forward up to eight taxable years.

A qualified employer is a taxpayer employing 20 or less employees.

In addition, both the Personal Income Tax Law (PITL)[1] and Corporation Tax Law (CTL)[2] provisions regarding this credit contain certain anti-abuse rules. These rules were designed to prevent an existing business from being treated as first commencing business in the state when the business simply changed structure, i.e. changed from a sole proprietor to an S-corporation.

THIS BILL

For taxable years beginning on or after January 1, 2011, this bill would change existing law to define a qualified employer as one that employs 40 or fewer employees.

In addition, this bill would also provide an additional $3,000 credit for each of the two succeeding taxable years after the initial year during which the employee is hired. This credit would be granted only if the employer continues to employ the same employee that the taxpayer received this credit. The additional credit is available for one or both of the succeeding two years.

Existing law that determines whether a taxpayer has first commenced doing business in this state during the taxable year has been eliminated in this bill for PITL and for CTL. Under both laws, because the commencing business requirements are deleted, modifications have been made to current law to eliminate the anti-abuse rules.

IMPLEMENTATION CONSIDERATIONS

The bill would allow a taxpayer to claim an additional $3,000 credit for each employee hired, if the same employee continues to be employed by the taxpayer. The criteria for the existing Jobs tax credit is based on a “full-time employee equivalent” calculation that could include more than one employee as part of the calculation. As a result, individual employee information is unnecessary for purposes of claiming the existing credit but would be required for this bill. If the author’s intent is to allow the credit to encourage increased employment unrelated to specific employees, department staff recommend the author amend the bill to allow the additional credit on a “full-time employee equivalent” method, consistent with the existing Jobs tax credit. As a result, a taxpayer that has an annual increase in employment over the period of two years, regardless of employing the same employees, would be allowed the additional credit.

[1] CR&TC section 17276.20(f).
[2] CR&TC section 24416.20(g)

In addition, the language is unclear if the author intends the credit to be $3,000 for each year the same employee continues to be employed or if the credit is intended to be a cumulative total of $3,000 for both of the two succeeding taxable years that the employee remains employed. To eliminate disputes between taxpayers and the department, it is recommended the language be amended to clarify how to apply the additional $3,000 credit.

TECHNICAL CONSIDERATIONS

The bill references California Revenue and Taxation Code (CR&TC) sections that have been renumbered. All references to CR&TC section 17276 should be updated to CR&TC section 17276.20; all references to CR&TC section 24416 should be updated to CR&TC section 24416.20.

The phrase "qualified taxpayer" should be replaced with "qualified employer" on line 36 of page 5 and line 27 of page 12.

On page 5, line 33 and on page 12, line 24 after “for” delete “the”.

LEGISLATIVE HISTORY

AB 236 (Swanson, 2011/2012) would allow a credit of $5,000 for each full-time employee hired that is either an ex-offender or has been unemployed for 12 consecutive months. This bill is currently in the Assembly Revenue and Taxation Committee.

AB 304 (Knight, 2011/2012) would allow a credit of $3,000 or $5,000, dependent on the specified criteria, to an employer with 30 or more employees that moves or establishes a headquarters within California. This bill is currently in the Assembly Revenue and Taxation Committee.

AB 1009 (Wieckowski, 2011/2012) would modify the current Jobs tax credit to increase the allowance of the credit from employers with fewer than 20 employees to employers with 100 or fewer employees. This bill is currently in the Assembly Rules Committee.

SB 640 (Runner, 2011/2012) would allow a credit of $500 per month for each full-time employee hired who has received unemployment benefits for six months prior to being hired. This bill is currently in the Senate Governance and Finance Committee.

AB 340 (Knight, 2009/2010) would have allowed a hiring credit to employers who established a headquarters within California. This bill failed passage out of the Assembly Revenue and Taxation Committee.

ABX3 15 (Stats. 2009, Ch. 10) and SBX3 15 (Stats. 2009, Ch. 17) provide for a tax credit of $3,000 for each net job increase.

SB 508 (Dutton, 2009/2010), SBX6 11 (Dutton, 2009/2010), and SBX8 59 (Dutton, 2009/2010) are identical. These bills would have provided a tax credit for the first $6,000 of wages paid or incurred to an individual documented by the Employment Development Department. SB 508 failed passage out of the Senate Revenue and Taxation Committee by the constitutional deadline; SBX6 11 (Dutton, 2009/2010) failed passage out of the Senate Revenue and Taxation Committee; SBX8 59 failed passage out of the Senate Revenue and Taxation Committee without further action.

SB 612 (Runner, 2009/2010) would have provided a tax credit of $500 per month for each qualified employee employed by a taxpayer. This bill failed passage out of the Senate Revenue and Taxation Committee.

PROGRAM BACKGROUND

As of April 2, 2011, the total Personal Income Tax and Business Entity returns claiming the Jobs tax credit was 6,994, and the amount of credits claimed was $45.3 million. The cut-off date will be the last day of the calendar quarter within which the FTB estimates it will have received timely filed original returns claiming the credit that cumulatively total $400 million.

OTHER STATES' INFORMATION

The states surveyed include *Florida, New York, Illinois, Massachusetts, Michigan, and Minnesota.* These states were selected due to their location and similarities to California's economy, business entity types, and tax laws.

Florida allows businesses located in an Enterprise Zone (EZ) a credit based on wages paid to new employees. Other wage-based credits are offered to businesses that are located in high crime areas or in rural areas.

New York allows a wage credit to a business that hires a full-time employee (either one in targeted group or not) for a newly created job in an Empire Zone.

Illinois allows a job tax credit for taxpayers conducting a trade or business in an EZ or a High Impact Business. The credit is $500 for each eligible employee hired to work in the zone during the tax year. It is available for eligible employees hired on or after January 1, 1986.

Massachusetts allows a Full Employment credit to employers who participate in the Full Employment Program and continue to employ a participant for at least one full month. The taxpayer may claim a credit of $100 per month of eligible employment per participant, up to $1,200 per participant.

Michigan and *Minnesota* do not offer wage credits.

FISCAL IMPACT

This bill would require a calculation for the credit that would require the existing Jobs Tax Credit form to be modified. These changes could be incorporated into the department's annual changes, and as such, the costs would be minor.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

The current Jobs Tax Credit is capped at $400 million. The Jobs tax credit requires the FTB to disallow credits claimed on returns filed after the end of the calendar quarter in which the department believes the cap will be reached. The current projection is that the existing Jobs Tax Credit will be exhausted during the 2011 taxable year based on historic trends of credit usage.

If so, there would be no credit available in the 2012 taxable year. Therefore, any proposals to expand the credit in 2012 would have no revenue impact. The actual credit usage will be monitored throughout the current filing season. If it becomes clear that a much smaller than expected portion of eligible taxpayers are claiming the credit, the estimates will be revised to reflect the availability of credits in 2012.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may say that this bill would stimulate the economy by offering tax credit to small businesses for each new full-time employee hired.

Con: Some taxpayers may say that with the state's current fiscal crisis, additional tax expenditures should be avoided.

POLICY CONCERNS

This bill makes changes to both the PITL[3] and CTL[4] to specifically eliminate the limitation of the credit to commencing businesses and repeals current anti-abuse rules related to a commencing business. These rules were designed to prevent an existing business from being treated as first commencing business in the state when the business simply changed structure (i.e. changed from a sole proprietor to an S-corporation). This bill could allow taxpayers in certain circumstances to claim multiple tax benefits by claiming the credit multiple times for the same employee.

LEGISLATIVE STAFF CONTACT

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[3] CR&TC section 17276(f).
[4] CR&TC section 24416(g).